

Summary and status of Florida's rule development to assume the CWA 404 program.

Status:

On May 11, Florida published a "Notice of Development of Rulemaking" to assume and administer CWA section 404 permitting. The state is amending the regulations implementing their Environmental Resource Permitting program (ERP) and establishing rules and procedures for administering a parallel 404 permitting program. These regulations and updates will codify all the general permits they will be administering, as well as guidance documents, applicant handbooks, permitting forms and other materials into their rules. They will hold public workshops on May 30, 31, and June 1, 2018. Public comments are due June 15, 2018. Florida's goal is to finalize the rules by August 23, 2018. Links to the notices are below.

62-331 Notice: [[HYPERLINK "https://www.flrules.org/Gateway/View_notice.asp?id=20402318"](https://www.flrules.org/Gateway/View_notice.asp?id=20402318)]

- This action proposes to create a new chapter in Florida's regulations to implement the State 404 Program. The proposed rule would include General Permits and an applicant handbook.

62-330 Notice: [[HYPERLINK "https://www.flrules.org/Gateway/View_notice.asp?id=20402415"](https://www.flrules.org/Gateway/View_notice.asp?id=20402415)]

- This action makes changes to Florida's ERP applicant handbook and applicant forms to assist with assumption of the 404 program.

Here is a direct link to the drafts: [[\ "erp" \]](https://floridadep.gov/water/water/content/water-resource-management-rules-development)]

Florida – USACE MOA for Assumption

Recommendation:

For EPA senior management to encourage FDEP and USACE staff to actively engage in the development of the State-USACE MOA. This can ensure that it can be signed and submitted as part of Florida's assumption request package.

Background:

- Part of a complete assumption request package is a signed MOA between the USACE and the state agency that will be administering the CWA 404(g) program.
- Florida Department of Environmental Protection (FDEP) shared a draft MOA with the USACE in December 2017, which is based upon the MI and NJ MOA's which are dated.
- EPA staff have heard that FDEP leadership has instructed its staff not to engage with the USACE Jacksonville District as issues related to the scope of retained waters are being worked out at senior levels.
- The discussions regarding retained waters are preventing discussions on other key aspects of the MOA from being addressed at this time.
- The state/USACE MOA addresses issues beyond the identification of waters retained by the USACE for permitting purposes. It outlines several other key processes to enable a

smooth transition from USACE to the state for processing permit applications and enforcement. Specifically, the MOA includes procedures to transfer in-process permit applications, enforcement actions, identification of which GPs will be assumed by the state, and other matters.

- EPA staff have been encouraging the two agencies to communicate on the MOA.

EPA encourages the two agencies to engage in discussions on the MOA to clarify the provisions it is to address for the transfer of the program to the state. We encourage and believe the two organizations, at the staff level, can come to agreement on all sections of the MOA aside from the retained waters section which is being discussed at more senior levels.

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